

The Honorable Barbara J. Rothstein

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

EDWIN FULLER,

Plaintiff,

v.

STATE OF WASHINGTON, *et. al.*,

Defendants

NO. 20-cv-6057-BJR-DWC

**ORDER ADOPTING REPORT AND  
RECOMMENDATION AND  
DISMISSING COMPLAINT**

**I. INTRODUCTION**

This matter comes before the Court on a Report and Recommendation (“R&R”) issued by Magistrate Judge David W. Christel, recommending dismissal of this case in its entirety. Having reviewed the R&R and the objections thereto, the remainder of the record in this matter and the relevant caselaw, the Court finds and rules as follows.

**II. BACKGROUND**

Plaintiff Edwin Fuller, a pretrial detainee proceeding *pro se*, filed a proposed complaint and an Application for Leave to Proceed *In Form Pauperis* on October 26, 2020. On December 4, 2020, Judge Christel issued an Order to Show Cause or Amend, noting that the original proposed complaint, attempting to state a number of civil rights claims under 42 U.S.C. § 1983, contained numerous fatal deficiencies. The Order directed Fuller to show cause why the matter

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1 should not be dismissed, or to file an amended pleading for consideration. Fuller filed the first  
2 Proposed Amended Complaint on January 11, 2021. On February 2, 2021, Judge Christel issued  
3 a second Order to Show Cause, providing Plaintiff with another opportunity to correct certain  
4 legal and factual deficiencies in the pleading. This second Order stated that Fuller had again  
5 failed to allege facts necessary to support his civil rights claims. Fuller had also named certain  
6 defendants who have absolute immunity from suit; the State of Washington, which cannot be  
7 sued under 42 U.S.C. § 1983; and a private party, who was not alleged to have been acting under  
8 color of state law, among other deficiencies. Fuller was again ordered to file an amended  
9 pleading or face dismissal of his claims.

10 On April 5, 2021, Fuller filed a second amended proposed Complaint, the operative  
11 Complaint referred to herein. This Complaint explicitly names only Chuck E. Atkins, Clark  
12 County Sheriff, as Defendant, though it also alleges others violated Fuller's civil rights, and the  
13 caption includes "State of Washington" as a defendant. Dkt. 10 at 1, 3. Although the Complaint  
14 lacks detail, Fuller appears to be claiming that the public defender assigned to his case "failed to  
15 use ordinary legal skills," that the judge and prosecuting attorney conspired to deny him a fair  
16 and/or speedy trial; that he was denied access to the jail's law library; and that he was exposed to  
17 COVID-19 while incarcerated, although he does not allege he was infected. Plaintiff claims his  
18 rights under the Fifth and Fourteenth Amendments were violated, and seeks damages for claimed  
19 mental and emotional distress.

### 20 III. DISCUSSION

21 The Prison Litigation Reform Act of 1995 requires the Court to screen complaints  
22 brought by prisoners seeking relief against a governmental entity or officer or employee of a  
23

1 governmental entity. 28 U.S.C. § 1915A(a). The Court must “dismiss the complaint, or any  
2 portion of the complaint, if the complaint: (1) is frivolous, malicious, or fails to state a claim  
3 upon which relief may be granted; or (2) seeks monetary relief from a defendant who is immune  
4 from such relief.” *Id.* at (b); 28 U.S.C. § 1915(e)(2); *see Barren v. Harrington*, 152 F.3d 1193  
5 (9th Cir. 1998).

6 As fully outlined in the R&R, the proposed Second Amended Complaint—Fuller’s third  
7 opportunity to state claims upon which relief may be granted—fails to allege facts sufficient to  
8 support any of Fuller’s claims. Although Fuller claims Defendant Atkins’ failure to supervise  
9 resulted in a violation of Fuller’s civil rights, the Complaint is devoid of any specific acts or  
10 omissions by Atkins that would support this assertion. As noted in both Orders to Show Cause  
11 and in the R&R, Fuller’s claims against the State of Washington cannot proceed because a state  
12 is not a “person” and cannot be sued for damages or for injunctive relief. *See Arizonans for*  
13 *Official English v. Arizona*, 520 U.S. 43, 69 (1997). Fuller’s claims against others referenced in  
14 the Complaint (but not explicitly listed as defendants) also must be dismissed. While the  
15 Complaint states broadly that these individuals were negligent and violated Fuller’s civil rights,  
16 it does not include any facts that would support claims against them. As noted, several of these  
17 putative defendants, in addition, either were not acting under color of state law, or are immune  
18 from suit.

19 Plaintiff’s Objections to the R&R fails to address these core deficiencies. While Fuller  
20 takes the opportunity to name the defendants individually, he still fails to include specific  
21 allegations supporting his claims, and for the most part merely recites references to constitutional  
22 provisions and broad legal standards related to those claims. Even interpreting Fuller’s *pro se*  
23

1 complaint liberally, the Court concludes that the Plaintiff has failed to state any claims on which  
2 relief can be granted, despite multiple chances to do so. The Complaint must therefore be  
3 dismissed.

4  
5 **IV. CONCLUSION**

6 The Court, having reviewed the Report and Recommendation of Magistrate Judge  
7 Christel, Plaintiff's Objections to that Report and Recommendation, and the remaining record,  
8 does hereby find and ORDER:

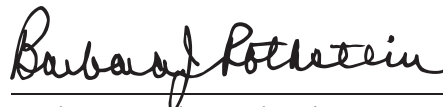
9 (1) The Court adopts the Report and Recommendation.

10 (2) The Proposed Second Amended Complaint is dismissed.

11 (3) Plaintiff's Application to Proceed *In Forma Pauperis* (Dkt. 3) is denied without  
12 prejudice as moot.

13 (4) The Clerk is directed to send copies of this Order to Plaintiff and to the Hon. David  
14 W. Christel.

15 DATED this 4th day of January, 2022.

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19 Barbara Jacobs Rothstein  
20 U.S. District Court Judge